

Notice of Allowability

Application No.

10/055,875

Examiner

Roy M. Punnoose

Applicant(s)

STERLING ET AL.

Art Unit

2877

AV

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendments received on 10/04/04.
2. ☒ The allowed claim(s) is/are 95-113.
3. ☒ The drawings filed on 20 February 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 10/14/04
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

GREGORY J. TOATLEY, JR.
PRIMARY EXAMINER 2877

DETAILED ACTION

Response to Amendment

1. Applicant's amendments filed on October 04, 2004 is acknowledged and have been entered into the records. Claims 1-50, 62-82, and 89-94 have been cancelled. Claims 51-61 and 83-88 have been withdrawn. Claims 95-113 have been added.

Allowable Subject Matter

2. Claims 95-113 are allowed.
3. Claim 95 is allowable because the prior art of record, taken alone or in combination, fails to disclose or render obvious a method for determining the concentration of an analyte in a patient comprising, transmitting a calibration beam of radiation from the source through the sample element, but not through the sample portion, such that a calibration signal is generated by the optical detection system, in combination with the rest of the limitations of said claim.
4. Claims 96-104 are allowable because they are dependent on independent claim 95.
5. Claim 105 is allowable because the prior art of record, taken alone or in combination, fails to disclose or render obvious an apparatus for determining the concentration of an analyte in a biological fluid sample drawn from a patient comprising, a calibration beam of radiation transmitted from the source through the sample element, but not through the biological fluid sample, and a corresponding calibration signal generated by the optical detection system, in combination with the rest of the limitations of said claim.
6. Claims 106-113 are allowable because they are dependent on independent claim 105.
7. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

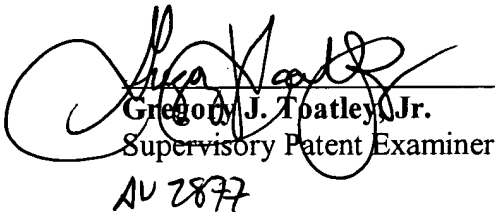
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Roy M. Punnoose** whose telephone number is **571-272-2427**.

The examiner can normally be reached on 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Gregory J. Toatley, Jr.** can be reached on **571-272-2800 ext.77**. The fax phone number for the organization where this application or proceeding is assigned is **703-872-9306**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Roy M. Punnoose
Patent Examiner
Art Unit 2877
October 14, 2004



Gregory J. Toatley, Jr.
Supervisory Patent Examiner
AU 2877